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11 ARIZONA SUPERIOR COURT
12 YAVAPAI COUNTY

13 STATE OF ARIZONA,

14 Plaintiff,

15 vs.

16 JAMES ARTHUR RAY,

17 Defendant.

No. ✓1300CR201080049

**RESPONSE OF INTERVENOR
KPNX BROADCASTING CO. TO
STATE'S REQUEST FOR IN
CAMERA REVIEW OF AUTOPSY
REPORTS/PHOTOGRAPHS**

(Assigned to the Honorable Warren R.
Darrow)

[Hearing: Mar. 16, 2010 at 9:00 a.m.]

18
19 Pursuant to A.R.S. § 39-121, *et seq.* (the "Arizona Public Records Law"),
20 KPNX Broadcasting Co. ("KPNX") respectfully responds to the State's Request for *In*
21 *Camera* Review of Autopsy Reports/Photographs. Specifically, KPNX does *not* seek to
22 inspect autopsy photographs. Further, KPNX agrees with the State and the victims that
23 the first page and the "Summary/Opinion" page of each autopsy report should be
24 released, and submits that these public records should be disclosed as promptly as
25 possible. See A.R.S. §§ 39-121.01(D)(1), 39-121.01(E) (custodian "shall *promptly*
26 furnish" public records on request; "[a]ccess to a public record is deemed denied if a
27 custodian fails to *promptly* respond to a request") (emphasis added).
28

1 As for the rest of the autopsy reports, the Court should review these records
2 *in camera* and order disclosure of any portions that shed light on the performance of
3 official duties or the government's investigation. *Schoeneweis v. Hamner*, 223 Ariz. 169,
4 __ ¶ 21, 221 P.3d 48, 54 (Ct. App. 2009) (holding autopsy reports are public records;
5 "This case involves a death and potential injuries to another that occurred as a result of
6 potential or apparent unlawful conduct, and the government's response to that situation
7 merits public scrutiny."). KPNX has not seen the autopsy reports, and therefore cannot
8 determine whether the State has described the contents accurately and completely.
9 Accordingly, the Court should review the records and determine whether any portions
10 beyond the first page and "Summary/Opinion" page should be released. *Id.* (approving of
11 *in camera* review of autopsy records); *Griffis v. Pinal County*, 215 Ariz. 1, 5, 156 P.3d
12 418, 422 (2007) (noting courts, not public officials, are "the final arbiter" of disclosure).
13 Public records, including records of ongoing criminal investigations, are presumed open
14 to the public for inspection as public records. *Cox Ariz. Publ'ns, Inc. v. Collins*, 175 Ariz.
15 11, 14, 852 P.2d 1194, 1198 (1993). To overcome this strong presumption of public
16 access, opponents of disclosure must point to specific facts to demonstrate that disclosure
17 is outweighed by the privacy interests at stake. *Id.*

18 At bottom, the Court should redact any truly private information from
19 records, but order disclosure of all other information that would help the public better
20 understand and evaluate the State's investigation of this case. *See Phoenix Newspapers,*
21 *Inc. v. Keegan*, 201 Ariz. 344, 351, 35 P.3d 105, 112 (Ct. App. 2001) ("The core purpose
22 of the public records law is to allow the public to access official records and other
23 government information so that the *public may monitor the performance of government*
24 *officials and their employees.*") (emphasis added).

1 Conclusion

2 For the foregoing reasons, the Court should (1) order prompt disclosure of
3 the first page and the "Summary/Opinion" page of the autopsy reports, and (2) conduct *in*
4 *camera* review of the remaining autopsy records to ensure that the public's interest in
5 disclosure is fairly balanced against the asserted privacy interests.

6 RESPECTFULLY SUBMITTED this 12 day of March, 2010.

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15 ORIGINAL of the foregoing filed with the Clerk
16 of the Court this 12th day of March, 2010, and

17 COPY of the foregoing hand-delivered
18 this same day to:

19 Hon. Warren R. Darrow
20 Yavapai County Superior Court – Division B
Verde Valley Justice Facility
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23 facsimile and US Mail this same day to:


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